

PT 98-42

Tax Type: **PROPERTY TAX**

Issue: **Charitable Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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<b>BOARD OF CERTIFIED SAFETY</b>	)		
<b>PROFESSIONALS</b>	)		
<b>Applicant</b>	)		
	)	<b>Docket #</b>	<b>94-10-80</b>
<b>v.</b>	)		
	)	<b>Parcel Index #</b>	<b>03-20-25-300-018</b>
<b>THE DEPARTMENT OF REVENUE</b>	)		
<b>OF THE STATE OF ILLINOIS</b>	)		

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Mr. Richard C. Kirby appeared on behalf of the Board of Certified Safety Professionals.

Synopsis:

The hearing in this matter was held on February 6, 1997, at the Willard Ice Building, 101 West Jefferson Street, Springfield, Illinois to determine whether or not Champaign County Parcel Index No. 03-20-25-300-018 qualified for exemption from real estate taxation for the 1994 assessment year.

Mr. Roger L. Brauer, Executive Director of the Board of Certified Safety Professionals, (hereinafter referred to as the "Applicant") was present and testified on behalf of the applicant.

The issues in this matter include, first, whether the applicant is a school or a charitable organization; secondly, whether the applicant owned the parcel here in issue during the 1994 assessment year; and lastly, whether the applicant used this parcel for school or charitable purposes during the 1994 assessment year. Following the submission of all of the evidence and a

review of the record, it is determined that the applicant is neither a school nor a charitable organization. It is also determined that the applicant owned this parcel during the entire 1994 assessment year. It is further determined that the applicant did not use this parcel for either school or charitable purposes during the 1994 assessment year. It is therefore recommended that Champaign County Parcel Index No. 03-20-25-300-018 remain on the tax rolls for the 1994 assessment year and that it be assessed to the applicant, the owner thereof.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the “Department”) in this matter, namely that this parcel did not qualify for exemption for the 1994 assessment year, was established by the admission in evidence of Department’s Exhibit Nos. 1 through 5A.

2. On December 30, 1994, the Champaign County Board of Review transmitted to the Department an Application for Property Tax Exemption To Board of Review concerning the parcel here in issue for the 1994 assessment year. (Dept. Ex. No. 1)

3. On November 9, 1995, the Department advised the applicant that it was denying the exemption of this parcel. (Dept. Ex. No. 2)

4. By a letter dated November 24, 1995, the applicant’s then attorney requested a formal hearing in this matter. (Dept. Ex. No. 3)

5. The hearing in this matter, conducted on February 6, 1997, was held pursuant to that request.

6. The applicant acquired the parcel here in issue by a warranty deed dated October 2, 1981. (Dept. Ex. No. 1B)

7. Thereafter, the applicant constructed its corporate office building on this parcel and moved into this office building on or about August 2, 1982. (Dept. Ex. No. 3B p. 6)

8. The applicant was incorporated pursuant to the “General Not For Profit Corporation Act” of Illinois on July 23, 1969. (Dept. Ex. No. 3D)

9. On November 4, 1970, the Articles of Incorporation of the Applicant were amended changing the name of the corporation to “Board of Certified Safety Professionals of the Americas”. The purpose clause was changed to read as follows:

To provide for the safety and welfare of the public at large, it shall be the purpose of the Board to:

- (a) Establish the minimum academic and experience attainments necessary to qualify for the designation ‘Certified Safety Professional of the Americas’.
- (b) Determine the competence of safety professionals and to arrange, control, and conduct investigations and examinations to verify the qualifications of candidates for certificates to be issued by the Board.
- (c) Grant and issue, to qualified applicants a certificate and to maintain a roster of the holders of all valid certificates.

10. At a later time, before 1994, the Board of Directors of the applicant decided to delete the words “of the Americas” from the name of the applicant. The by-laws of the applicant reflect this change. (Tr. p. 33, Dept. Ex. No. 3F)

11. The building on this parcel is a single-story office building with a basement. The applicant occupies the entire building. (Tr. pp. 9 & 10)

12. The applicant, during 1994, issued two certifications for safety professionals. The first certification was the certified safety professional (or “CSP”) and the second certification was the associate safety professional (or “ASP”). (Dept. Ex. 3B)

13. To apply to receive one of these certifications, the candidate must have a Bachelor’s Degree in Safety and four years of professional level safety practice. If the candidate meets these two standards, they must then take a two-day, two tiered professional examination. The first exam is identified as safety fundamentals and the second is a comprehensive practice exam including certain specialties. (Tr. pp. 16 & 17)

14. If a candidate meets the academic standard, the experience standard, and successfully passes the two examinations, they qualify for the CSP title. (Tr. p. 17)

15. A candidate who meets the academic standard, the experience standard, and has passed the safety fundamentals exam is designated an ASP. (Dept. Ex. No. 3B)

16. The safety fundamentals exam is waived if an applicant is a currently certified professional engineer, is certified by the American Board of Industrial Hygiene, or is certified by the American Board of Health Physics. (Dept. Ex. No. 3B)

17. The board of directors of the applicant consists of 13 members. Of those 13 members, 10 are members of the organizations, which sponsor the applicant. Two members are nominated by the American Society of Safety Engineers; two are nominated by the American Industrial Hygiene Association; two are nominated by the Systems Safety Society; two members are nominated by the Society of Fire Protection Engineers; one is nominated by the National Safety Council; and one is nominated by the Institute of Industrial Engineers. In addition, there is one member of the board from the public at large and two members who represent the certified safety professionals. (Tr. pp. 18 & 19)

18. The applicant's sources of revenues during 1994 were as follows:

Renewal fees	\$ 497,101
Examination fees	541,637
Application fees	112,720
Interest	15,465
Management fee	23,390
Mailing list rental and directory sales	7,385
Miscellaneous	<u>248</u>
	\$1,197,946

(Dept. Ex. No. 3I)

19. The applicant's expenses during 1994 were as follows:

EXPENSES	
Examinations and testing	\$ 508,632
Applications for certification	220,597
Certification maintenance	227,988
General and administrative	<u>123,424</u>
	\$1,080,641

(Dept. Ex. No. 3I)

20. Applicant's financial report also shows that the applicant had an excess of revenues over expenses of \$106,479.00 for the year ended December 31, 1994 and an ending fund balance of \$432,338.00. (Dept. Ex. No. 3I)

21. During 1994, the applicant's fee schedule read as follows:

<u>FEE</u>	<u>RATE</u>
Renewals:	
CSP	\$55
ASP	\$45
Retired	\$10
Examinations:	
Safety Fundamentals	\$155
Specialty	\$180
Retakes	\$80
Applications	\$80

(Dept. Ex. No. 3K)

22. The applicant does not waive or reduce fees in cases of need. (Tr. p. 38)

23. The applicant is exempt from federal income tax pursuant to Internal Revenue Code Section 501 (c) (6). (Appl. Ex. No. 1)

24. I take Administrative Notice of Internal Revenue Code Section 501 (c) (6) which exempts the following types of organizations:

Business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

25. The applicant asserted that persons holding the CSP designation have been designated by several federal governmental agencies as qualified to oversee certain types of health and safety or environmental activities. (Tr. pp. 13 & 14)

26. The applicant offered in evidence an agreement between the applicant and the Commonwealth of Massachusetts whereby the applicant does the testing for registered Professional Engineers in safety engineering in Massachusetts. (Dept. Ex. No. 3 Exhibit A)

27. The applicant's witness was not personally aware of any specific requirements for the CSP designation in the State of Illinois. (Tr. pp. 38 & 39)

28. The questions for the examination for the CSP certification are written by certified safety professionals who are in practice who submit their proposed questions to the applicant. The examination committee of the board of directors of the applicant reviews the questions which are submitted. The questions are then turned over to Professional Examination Services, the applicant's contract examination service, which determines that the content is valid and that the examinations are reliable. Professional Examination Services also did the scoring of the examinations as well as printing them for the applicant during 1994. (Tr. p. 25)

29. During 1994, the applicant gave the tests on two separate dates in approximately 80 cities. The proctors for the tests were certified safety professionals who were paid an honorarium. These persons were required to obtain a place to give the exams. They also had to receive the shipment of exams from the contract examination service, maintain the security of the examinations, conduct the examinations, and return the completed examinations to the examination service for scoring. (Tr. p. 26)

30. Within the building on this parcel, the employees of the applicant receive and process applications. This process includes verifying transcripts and evaluating work experience. The employees of the applicant then notify persons who are eligible for the exams and collect the fees. The employees also notify the examination service and secure the proctors. In addition, the applicant maintains continuing education records for persons with the CSP designation so that they may be recertified. In summary, the activities which take place in the building on this parcel are the administrative functions concerning the testing, certifying, and recertifying of safety professionals. (Tr. pp. 27 & 28)

31. During 1994, on approximately 25 occasions, a person who wanted to take one of the examinations on a date other than the two scheduled dates was allowed to come to the building on this parcel where an employee of the applicant would proctor the examination for them. During 1994, a total of approximately 2,500 to 3,000 exams were administered. (Tr. p. 28)

32. The certified safety professionals are required to be recertified by the applicant every five years. To be recertified, a CSP must either retake the comprehensive practice examination and pass it or take 25 points worth of continuing education courses. The applicant does not offer any of these continuing education courses. (Tr. pp. 36 & 37)

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

35 **ILCS** 200/15-35 provides in part as follows:

. . . all property of schools, not sold or leased or otherwise used with a view to profit is exempt, . . . . Also exempt is:

(c) property donated, granted, received or used for public school, college, theological seminary, university, or other educational purposes, whether held in trust or absolutely; . . . .

35 **ILCS** 200/15-65 provides in part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity;

(b) beneficent and charitable organizations incorporated in any state of the United States....

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the

exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986).

I take Administrative Notice of the Department's decision in Board of Certified Safety Professionals of the Americas v. The Department of Revenue, Docket No. 82-10-23. That case involved this applicant's use of this same parcel and the building thereon for essentially the same purposes for 1982. Those purposes were the administrative functions concerning testing, certifying, and recertifying of safety professionals. In that decision the Department determined that the applicant was neither a school nor a charitable organization. The applicant took administrative review of that decision pursuant to the administrative review law. The Illinois Supreme Court in Board of Certified Safety Professionals of the Americas, Inc. v. Johnson et al., 112 Ill.2d 542 (1986), in affirming the Department's decision in that case determined at page 546 that the applicant was not a school as follows:

However, the Board's reliance on *American Medical Colleges* is misplaced. The holding in that case was that an organization that is created by tax-exempt institutions that join together to function more efficiently is also entitled to an exemption. (See *Association of American Medical Colleges v. Lorenz* (1959), 17 Ill. 2d 125, 129.) In the present case, the organizations that sponsor the Board are not themselves tax exempt. Moreover, since the State does not license or register safety professionals, the Board's activities do not "'substantially lessen[ ] what would otherwise be a governmental function and obligation.'" (*Milward v. Paschen* (1959), 16 Ill. 2d 302, 308.) The Board cannot claim an exemption for activities that would not entitle its sponsors to an exemption. Thus, the Board does not meet the requirements for an exemption for property used for educational purposes.

No evidence was offered at the hearing in this case that any of the organizations which sponsor the applicant are tax exempt. I have previously found that the State of Illinois still does not license or register safety professionals. I therefore conclude that this parcel does not qualify for exemption from property tax as property used for educational or school purposes.



The Supreme Court in that decision also determined that this parcel had not been used for charitable purposes during 1982 at page 546 as follows:

Similarly, the Board's contention that it is entitled to a tax exemption because its property is used exclusively for charitable purposes (Ill. Rev. Stat. 1983, ch. 120, par. 500.7) must fail. The criteria for determining whether an organization qualifies for this exemption as set out in *Methodist Old Peoples Home v. Korzen* (1968), 39 Ill. 2d 149, 156-57, include the requirements that the organization benefit the public at large, reduce the burdens of government, and derive its funds from public and private charity. However, the Board's activities benefit primarily a particular class of people, namely safety professionals, and only indirectly the general public. Moreover, the public benefits of the activities of the members of the safety profession are the result of services rendered by those members, who would perform the same function with or without Board certification. Further, the Board's activities do not reduce the State's burdens since, as noted above, the State does not license or register safety professionals. Finally, the Board derives its funds from examination and renewal fees, and not from public or private charity.

In the case of Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968), the Illinois Supreme Court laid down six guidelines to be used in determining whether or not an organization is charitable. Those six guidelines read as follows: (1) the benefits derived are for an indefinite number of persons; (2) the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise; (3) funds are derived mainly from private and public charity, and are held in trust for the objects and purposes expressed in its charter; (4) charity is dispensed to all who need and apply for it; (5) no obstacles are placed in the way of those seeking the benefits; and (6) the primary use of the property is for charitable purposes. Based on the foregoing findings of fact, I conclude, just as the Supreme Court did in the Board of Certified Safety Professionals of the Americas case, that the benefits of the applicant's activities are primarily derived by the persons who take and pass the applicant's tests and become certified safety professionals. The benefits to the general public are, I conclude, merely incidental. The applicant, I conclude, has no capital, capital stock or shareholders. However, the applicant in 1994 had an excess of revenues over expenses of \$106,479.00 which was added to applicant's ending fund balance which had grown to \$432,338.00. During 1994, I conclude that the

applicant's funds were primarily derived from application fees, examination fees and renewal fees and not public or private charity. In view of the finding that the applicant does not waive or reduce fees in cases of need, I conclude that the applicant does not dispense charity to all who need and apply for it and that obstacles are placed in the way of those seeking the benefits. Finally, I conclude that the primary use of this property is not for charitable purposes. In summary, I conclude that during 1994 the applicant was not a charitable organization and that applicant did not use this parcel for charitable purposes.

Near the close of the hearing, the attorney for the applicant requested that the Department take into consideration its decision in Dental Assisting National Board, Inc. v. Department of Revenue, Docket No. 91-16-1130. That decision was issued on November 20, 1994. A copy of that decision was admitted into evidence as Applicant's Exhibit No. 3. In that case, the Department determined that the Dental Assisting National Board was a charitable organization which used a portion of the parcel there in issue and the building thereon for charitable purposes. That determination was based on the fact that the Dental Assisting National Board provided either the examination services or the credentials to each of the 30 states which licensed or certified dental assistants, thereby substantially lessening the burdens of government. Also the Dental Assisting National Board's testing and certification in the areas of infection control and dental radiation were a real benefit to the general public.

In this case, at most one state, Massachusetts, has agreed to license Professional Safety Engineers in part based on the applicant's testing. This clearly by itself does not substantially lessen the burdens of government. Also, it has previously been determined that the primary beneficiary of the applicant's activities are the certified safety professionals and the benefits to the general public are merely incidental. Consequently, the facts in this case are clearly distinguishable from the facts in the Dental Assisting National Board, Inc. case.

After the Department had issued its decision in the Dental Assisting National Board, Inc. case, the Second District Appellate Court on August 8, 1995, issued its decision in the case of DuPage County Board of Review v. Joint Commission on Accreditation of Healthcare

Organizations, 274 Ill.App.3d 461 (2<sup>nd</sup> Dist. 1995), notice of appeal denied. That case, like the case here in issue, concerned an organization which licensed certain providers of services and collected fees from those providers. In that decision, the Court relied on the decision in Methodist Old Peoples Home V. Korzen, 39 Ill.2d. 149 (1968) and determined that the Joint Commission did not meet any of the six Methodist Old Peoples Home criteria. The Court went on to conclude that the property in issue was not used primarily for charitable purposes, but rather primarily for the benefit of the health care providers, for a fee. In the case here in issue, I have concluded that the applicant did not meet any of the six Methodist Old Peoples Home criteria and that this parcel was not used primarily for charitable purposes but rather for the benefit of the certified safety professionals, for a fee.

I therefore recommend that Champaign County Parcel Index No. 03-20-25-300-018 remain on the tax rolls for the 1994 assessment year and be assessed to the applicant, the Board of Certified Safety Professionals, the owner thereof.

Respectfully Submitted,

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George H. Nafziger  
Administrative Law Judge  
June 24, 1998